
Title 34A, Chapter 8a, Utah Injured Worker Reemployment Act

34A-8a-101. Title -- Intent statement.

- (1) This chapter is known as the "Utah Injured Worker Reemployment Act."
- (2) This chapter is intended to promote and monitor the state's and the employer's capacity to assist the injured worker in returning to the work force by evaluating the effectiveness of the voluntary efforts of employers under this chapter.

34A-8a-102. Definitions.

- (1) "Division" means the Division of Industrial Accidents.
- (2) (a) "Gainful employment" means employment that:
 - (i) is reasonably attainable in view of an industrial injury or occupational disease; and
 - (ii) offers to an injured worker, as reasonably feasible, an opportunity for earnings.
- (b) Factors considered in determining gainful employment include an injured worker's:
 - (i) education;
 - (ii) experience; and
 - (iii) physical and mental impairment and condition.
- (3) "Initial written report" means a report required under Section 34A-8a-301.
- (4) "Injured worker" means an employee who sustains an industrial injury or occupational disease for which benefits are provided under Chapter 2, Workers' Compensation Act, or Chapter 3, Utah Occupational Disease Act.
- (5) "Injured worker with a disability" means an injured worker who:
 - (a) because of the injury or disease that is the basis of the employee being an injured worker:
 - (i) is or will be unable to return to work in the injured worker's usual and customary occupation; or
 - (ii) is unable to perform work for which the injured worker has previous training and experience; and
 - (b) reasonably can be expected to attain gainful employment after an evaluation provided for in accordance with this chapter.
- (6) "Parties" means:
 - (a) an injured worker with a disability;
 - (b) the employer of the injured worker with a disability;
 - (c) the employer's workers' compensation insurance carrier; and
 - (d) a rehabilitation or reemployment professional for the employer or the employer's workers' compensation insurance carrier.
- (7) "Reemployment plan" means a written:

- (a) description or rationale for the manner and means by which it is proposed an injured worker with a disability may return to gainful employment; and
- (b) definition of the voluntary responsibilities of:
 - (i) the injured worker with a disability;
 - (ii) the employer; and
 - (iii) one or more other parties involved with the implementation of the reemployment plan.

34A-8a-104. Application.

This chapter applies only to an industrial injury or occupational disease that occurs on or after July 1, 1990.

34A-8a-105. Duties of Utah State Office of Rehabilitation not affected.

This chapter does not affect the duties and responsibilities of the Utah State Office of Rehabilitation.

34A-8a-201. Chapter administration.

The commission shall administer this chapter:

- (1) through the division; and
- (2) in conjunction with the commission's administration of Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.

34A-8a-202. Rulemaking authority.

The commission may provide for the administration of this chapter by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

34A-8a-203. Reporting.

- (1) As used in this section, "reporting entity" means one of the following that provides benefits under Chapter 2, Workers' Compensation Act, or Chapter 3, Utah Occupational Disease Act:
 - (a) a self-insured employer as defined in Section 34A-2-201.5; or
 - (b) a workers' compensation insurance carrier.
- (2) Subject to the requirements of this section, a reporting entity shall quarterly report to the commission the following information for the previous quarter beginning with reporting for the quarter that begins July 1, 2009:
 - (a) the total number of injured workers for whom a reporting entity is required during the quarter to file an initial report under Section 34A-8a-301;
 - (b) the number of injured workers reported in Subsection (2)(a) for whom the reporting entity made a referral in accordance with Section 34A-8a-302;
 - (c) the number of injured workers reported in Subsection (2)(a) for whom the reporting entity did not make a referral in accordance with Section 34A-8a-302 because:

- (i) the injured worker was not medically stable during the quarter;
- (ii) the injured worker's physical capacity had not been determined during the quarter; or
- (iii) liability for the injured worker's claim was under review during the quarter;
- (d) the number of injured workers reported in Subsection (2)(a) for whom a referral or reemployment plan described in Section 34A-8a-302 was not necessary because:
 - (i) the injured worker returned to work in the same job, a new job, or a modified job:
 - (A) with the same employer; or
 - (B) a new employer;
 - (ii) the injured worker became self-employed;
 - (iii) the injured worker returned to work as a result of vocational rehabilitation support services, as defined by rule by the commission made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
 - (iv) the injured worker's disability was too severe to return to work; and
- (e) other information that the commission requires by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the voluntary efforts of employers under this chapter for the number of injured workers reported in Subsection (2)(a).
- (3) In addition to the rulemaking authority under Subsection (2), the commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding:
 - (a) the form of a report required under this section; and
 - (b) the procedure for filing a report required under this section.
- (4) (a) If a reporting entity fails to make a report as required by this section, the commission shall, pursuant to Title 63G, Chapter 4, Administrative Procedures Act, impose a civil assessment of up to \$500 for each quarter that a reporting entity fails to make a report.
- (b) (i) The commission shall deposit a civil assessment imposed under this Subsection (4) into the Uninsured Employers' Fund created by Section 34A-2-704 to be used for the purposes of the Uninsured Employers' Fund specified in Section 34A-2-704.
- (ii) The administrator of the Uninsured Employers' Fund shall collect money required to be deposited into the Uninsured Employers' Fund under this Subsection (4) in accordance with Section 34A-2-704.

34A-8a-204. Administrative review.

An employer or an injured worker may apply to the Division of Adjudication for resolution of an issue of law or fact arising under this chapter in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

34A-8a-301. Initial report on injured worker.

(1) An employer or the employer's workers' compensation insurance carrier shall prepare an initial written report assessing an injured worker's need or lack of need for vocational assistance in reemployment if:

- (a) it appears that the injured worker is or will be an injured worker with a disability; or
 - (b) the period of the injured worker's temporary total disability compensation period exceeds 90 days.
- (2) (a) Subject to Subsection (2)(b), an employer or the employer's workers' compensation insurance carrier shall:
- (i) serve the initial written report required by Subsection (1) on the injured worker; and
 - (ii) file the initial written report required by Subsection (1) with the division.
- (b) An employer or the employer's workers' compensation insurance carrier shall comply with Subsection (2)(a) by no later than 30 days after the earlier of the day on which:
- (i) it appears that the injured worker is or will be an injured worker with a disability; or
 - (ii) the 90-day period described in Subsection (1)(b) ends.
- (3) With the initial written report required by Subsection (1), an employer or the employer's workers' compensation insurance carrier shall provide an injured worker information regarding reemployment.

34A-8a-302. Evaluation of injured worker -- Reemployment plan.

- (1) Subject to the other provisions of this section, if an injured worker is an injured worker with a disability, the employer or the employer's workers' compensation insurance carrier shall, within 10 days after the day on which the employer or workers' compensation insurance carrier serves the initial written report on the injured worker, refer the injured worker with a disability to:
- (a) the Utah State Office of Rehabilitation; or
 - (b) at the employer's or workers' compensation insurance carrier's option, a private rehabilitation or reemployment service.
- (2) An employer or the employer's workers' compensation insurance carrier shall make the referral required by Subsection (1) for the purpose of:
- (a) providing an evaluation; and
 - (b) developing a reemployment plan.
- (3) The commission may authorize an employer or the employer's workers' compensation insurance carrier to:
- (a) not make a referral required by Subsection (1); or
 - (b) make a referral during a different time period than required by Subsection (1).

34A-8a-303. Reemployment objectives.

- (1) The commission through the division shall administer this chapter with the objective of assisting in returning an injured worker with a disability to gainful employment in the following order of employment priority:
- (a) same job, same employer;
 - (b) modified job, same employer;
 - (c) same job, new employer;
 - (d) modified job, new employer;

- (e) new job, new employer; or
- (f) retraining in a new occupation.
- (2) Nothing in this chapter or its application is intended to:
 - (a) modify or in any way affect an existing employee-employer relationship; or
 - (b) provide an employee with a guarantee or right to employment or continued employment with an employer.

34A-8a-304. Rehabilitation counselor.

A rehabilitation counselor to whom a referral is made under Section 34A-8a-302 shall have the same or comparable qualifications as those established by the Utah State Office of Rehabilitation for personnel assigned to rehabilitation and evaluation duties.